

PLANNING COMMISSION MINUTES

June 2, 2009

7:00 P.M.

Present: Chairman Clark Jenkins, Vice-Chairman Tom Smith, Ray Keller, Barbara Holt, Dave Badham, Michael Allen, City Council Representative Beth Holbrook, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen, and Recording Secretary Connie Feil.

Clark Jenkins welcomed all those present including a group of Boy Scouts.

Tom Smith made a motion to approve the minutes for May 5, 2009 as amended. Beth Holbrook seconded the motion and voting was unanimous in favor.

1. Consider preliminary and final PUD plat approval for Pebblewood PUD conversion located at 692 S. Orchard Dr., Anne Gregory, representing the Homeowners Association, applicant.

Anne Gregory, applicant, was present. Paul Rowland explained that Pebblewood Condominiums Homeowners Association, located at 692 S. Orchard Drive, requested a conversion from a condominiums to a PUD. This seven-unit complex, across the street from Bountiful High, consists of 2-duplex type units and 1-tri-plex unit, all with attached two car garages. Parking is available in most of the driveways and there are two additional guest parking stalls provided. While this complex does not meet today's requirement for additional visitor parking, it meets the requirements that were in place at the time of its original approval.

The difference between a PUD and a condo is very subtle. The lending industry views them as distinctly different types of development. Currently it is easier to get funding for PUD's than for condominiums, which is why we've seen several PUD conversions over the past year. The only real change is the name of the development and how the individual units are owned. Nothing changes with the floor plans, side yards, setbacks, parking, landscaping, etc.

Staff recommends preliminary and final PUD conversion for the Pebblewood Planned Unit Development with the following conditions:

1. Submit a current title report.
2. Make minor changes to the plat per red lines.
3. Pay all required fees.

After a brief discussion Michael Allen made a motion to recommend to the City Council preliminary and final PUD plat approval for Pebblewood PUD development conversion subject to the conditions outlined by Staff. Barbara Holt seconded the motion and voting was unanimous in favor.

2. Consider preliminary and final commercial site plan approval for 280 N. 200 W. professional building, Bill Smith, applicant.

Bill Smith, applicant, was present. Aric Jensen explained that Mr. Smith is requesting preliminary and final site plan approval for a two story office building located at 280 North 200 West. The main level is designed to be a dentist office, while the upper floor will be professional offices. The Planning Commission reviewed this project in October of 2007 and recommended approval. The reason that this is before the Commission a second time is that applicant was unable to begin construction in 2008 as anticipated, and the maximum 18 month approval period expired. The applicant is now prepared to begin construction as soon as he can obtain approval.

The proposed building will be approximately 7,000 sq. ft, with a small unfinished basement used for storage and utility access. At the most intense parking use, which is 100% medical office, the site would require 28 parking stalls. The proposed site plan will provide 29 parking stalls.

Stormwater detention will be located in the parking lot and metered out to the catch basin in 200 West via a new manhole and box located in the front yard near 300 North. Since onsite detention is provided, the storm drain fee should be waived. Sewer and water line connections will come in from 300 North, while the gas stub will come from the main located in the park strip along 200 West. Power will come from a new transformer corner of the site near 200 West.

The site plan shows that the existing fence on the east side will remain, which is a solid vinyl fence, and that a matching fence will be built along the south property line. There will be a solid dumpster enclosure in the southeast corner that will have matching doors.

The landscaping plan needs some revising and Staff recommends making those adjustments with the landscape architect as the building nears completion.

Staff recommends preliminary and final commercial site plan approval for the Mackay Dental Office Building, subject to the following conditions:

1. The landscaping plan and landscaping be completed to the satisfaction of the Planning Director prior to final occupancy approval.
2. The stormwater fee be waived because of the onsite detention.

There was a discussion regarding the onsite water detention. Barbara Holt made a motion to recommend to the City Council preliminary and final commercial site plat approval for Mackay Dental Office subject to the conditions outlined by Staff. Beth Holbrook seconded the motion and voting was unanimous in favor.

Chairman Jenkins explained to those present the procedure for holding a public hearing.

3. PUBLIC HEARING - Consider granting a variance to allow a reduced side yard setback on an existing home located at 2190 S. Wood Hollow Way, Nichole Golden, applicant.

Nicole Golden, applicant, was present. Aric Jensen explained that Nicole Golden is requesting a variance from the provisions of Section 14-4-105 YARD AND SETBACK REQUIREMENTS of the Bountiful City Land Use Ordinance. Ms. Golden's existing dwelling is located closer than 8', which is the minimum required setback in the RF Zone, to the adjacent property on the south (Lot 52 Maple Hills Subdivision, Plat C).

The home was constructed in approximately 1980 and was one of the first homes in the area. For unknown reasons, the original owner/builder of the home sited it improperly. As a result, the southwest corner of the home is approximately 2' from the side property line, while the southeast corner is the proper 8' from the property line.

Ms. Golden discovered the error a couple of years ago when preparing to submit a building application to repair a rotting deck. As shown on the survey, the corner of the deck (now removed) actually encroached on the adjoining parcel. At the time of the discovery, Ms. Golden contacted the City and the owners of Lot 52 in an effort to resolve the issue. Ms. Golden proposed purchasing part of Lot 52, which is vacant, but the owners declined. After further discussion with the City, the Title Company, and all others involved, Ms. Golden decided that her best recourse was to petition the City for a variance.

Mr. Jensen referred to the Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances.

Mr. Jensen continued to explain that the procedures for granting a variance are quite rigid. One of the requirements is that an approval authority must determine that a proposed variance request meets all of the provisions of the Code, or else it cannot grant a variance. Ms. Golden submitted a letter stating why she believes a variance should be approved. Staff has reviewed the letter and believes that Ms. Golden's arguments are well reasoned. Ms. Golden clearly did not create the problem and the requested relief is due to a hardship on the property. The fact that the lot is extremely wooded and that this was one of the first homes built in the area is a plausible explanation for why the home was sited incorrectly. Asking Ms. Golden to bring the property into compliance would cause an unreasonable hardship as the only practical solution would involve cutting the end off of the existing dwelling. Based on Ms. Golden's letter, and the discussion in the Staff report, Staff recommends approval of a variance from the minimum side yard setback provisions of Section 14-4-105 YARD AND SETBACK REQUIREMENTS of the Bountiful City Land Use Ordinance.

The public hearing was opened for all those with comments and concerns.

Ruell Kohler, owner of Lot 52 which is adjacent to the Golden's property, has met with Mr. Jensen concerning the property lines. At that time it was explained to him that the Golden's deck had encroached 2' onto his property. The Kohler's did not know that the deck was on their property until a permit was submitted to replace it. The Kohler's have no objections to replace the deck, as long as the replacement of the deck does not encroach onto their property and that the fence is removed and placed on the Golden's property.

Ms. Golden explained the legal process that she has gone through to get this resolved. She would like to obtain a building permit to replace the deck which would be built on her property, and in addition she will remove the fence where it encroaches on the Kohler's property.

The public hearing was closed without further comments.

There was a discussion regarding the replacement of the deck, removal of the fence, and if the property has been surveyed and marked to prevent any further problems.

Dave Badham made a motion to grant a variance at 2190 S. Wood Hollow Way to allow building a deck to the property line in the side yard setback, to remove the fence where encroaching, and if desired to replace the fence on the property line based on the findings that the requirements to grant a variance have been met. Barbara Holt seconded the motion and voting was unanimous in favor.

4. PUBLIC HEARING - Consider granting a variance to allow a drive access wider than the maximum allowed and to allow less than 50% landscaping in a front yard setback located at 320 S. 750 E. Scott Jones, applicant.

Scott Jones, applicant, was present. Aric Jensen explained that Scott Jones is requesting a variance from the provisions of Section 14-18-109 B. (maximum drive approach width) and 14-14-109 (minimum front yard landscaping requirement) of the Bountiful City Land Use Ordinance. Mr. Jones is requesting a variance to allow a drive approach of approximately 50' in width when a maximum of 30' is permitted, and to allow a front yard to have 58% in hard surfacing, when a maximum of 50% is allowed.

Mr. Jones remodeled his home last year – more than doubling the size of the original structure. As part of the process, he added an attached three car garage to the north, and a detached garage in the southwest corner. On the approved site plan, the driveway from the three car garage and the driveway from the detached garage were supposed to curve away from each other, creating a separation between the two drive approaches. When Mr. Jones actually poured the driveway for the three car garage, he brought it straight out to the street. In addition, the approved site plan showed a walkway coming from the front door and curving to the driveway. Instead of constructing it as drawn, Mr. Jones simply brought the walkway straight out to the sidewalk, effectively widening the driveway an additional 4-5 feet. The driveway for the detached garage has not been poured yet, but the substructure (roadbase and/or gravel) has been put down, and it is in a straight line instead of curving. Due to the configuration of the three car driveway and the adjoining walkway to the street, it is not possible to configure the detached garage driveway in such a way that you don't end up with a drive approach that is approximately 50 feet in width.

Mr. Jensen referred to Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances. The procedures for granting a variance are quite rigid. One of the requirements is that an approval authority must determine that a proposed variance request meets all of the provisions of the Code, or else it cannot grant a variance. In this instance, it is quite

clear that Mr. Jones deviated from the approved site plan, thus creating the need for a variance. This appears to be contrary to subsection (2)(b)(ii), which states:

In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

Mr. Jensen continued to explain that if Mr. Jones had followed his site plan and still needed a variance, then City Staff probably would have recommended approval. Because Mr. Jones deviated from the approved site plan, he alone created the need for the variance, and according to State Law a land use authority cannot grant a variance for a self-created hardship.

Staff recommends it be required that Mr. Jones modify the existing three car driveway to conform to the approved site plan, and to construct the detached garage driveway in conformance to the approved site plan then the Commission could approve a variance from the provisions of Section 14-18-109 B. (drive approach requirements) to allow less than 35' of separation between two drive approaches on the same property, with the finding that if the driveways had been constructed as approved by the City, they would have been closer than 35', and the City's approval was not a self created hardship.

The public hearing was opened for all those with comments and concerns.

Travis Kilpack, residing at 295 S. 750 E., would like to see more grass and less concrete on this property. Mr. Kilpack agrees with the Staff recommendation to eliminate the concrete and replace it with grass or other landscaping.

Jack Yoho, residing at 290 S. 750 E., gave a history of the property regarding the two drive accesses. The original developer created two drive approaches and at some time in the mid 1980's the previous owners removed the concrete and landscaped the drive access near the mail box.

The public hearing was closed without further comments.

Michael Allen excused himself from the meeting at 7:50 p.m.

Scott Jones explained that after a discussion with the contractors he decided to change the driveway and walkway curves to a straight shot to the street and sidewalk. He felt that for aesthetics reasons it would look better straight rather than having the curves. Mr. Jones felt that the frontage on his property is small, which is a result from being in a cul-de-sac, which it difficult to meet the 50% requirement for landscaping. Mr. Jones feels that he has not created any sort of hardship nor does it detract from the neighborhood by not having 50% landscaping in his front yard. The City originally approved the curb cuts and he feels that he shouldn't have to ask for a variance. Mr. Jones felt that it would not make a difference by making changing to the approved plans.

There was a lengthy discussion regarding Mr. Jones changing an approved site plan, that his frontage is larger than his surrounding neighbors, and the drive approach that has been abandoned.

Dave Badham mentioned that he studied the situation with eliminating the curves on the driveway and sidewalk and feels that it was a good decision to make them straight. He also feels that the decorative concrete in the driveway should be counted as landscaping. It has been done in good taste and is an improvement to the neighborhood. Mr. Badham disagrees with the staff recommendation.

Paul Rowland explained that the Engineering Office reviews all site plans and then stamps the plans when approved. This site plan was completed with red lines that are not unique to any other residential area. There were two separate site plans submitted for the two garages. The first site plan did not show that there was going to be two separate garages with two separate driveways. No excavation permit would be given to allow a drive approach as requested.

The Commission discussed different ways to resolve the situation that would meet the ordinance.

Russell Mahan suggested, to prevent any confusion, that with any motion being made, it be made very specific to the exact footage and placement of the drive approaches and landscaping.

Dave Badham made a motion to table this item until the June 16, 2009 meeting to allow the applicant to meet with Staff and complete a site plan that will meet Staffs approval. Tom Smith seconded the motion and voting was unanimous in favor.

5. Wasatch 2040 Growth Principles Presentation, Val Halford, WERC.

Val Halford was not present so this item was cancelled.

6. Planning Director's report and miscellaneous business.

Josh Paulson, residing at 150 W. 1520 N., would like the Planning Commission to look at changing the ordinance to allow having chickens in a residential area. Mr. Paulson wasn't aware that hens were not allowed at his home until the Animal Control notified him that they were not illegal. He mentioned that they are not a noise problem and are kept in his yard. He would like the Council to reconsider the ordinance.

Meeting adjourned at 8:35 p.m.

